

# **EXHIBIT G**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
MUSA HOXHAJ, ABDOU EL SHABEINY, AND  
RICARDO CORDERO,

Plaintiffs,  
-against- Case No.  
21 Civ. 06486  
(LJL)

MICHAEL CETTA, INC., MICHAEL CETTA AND  
STEVEN CETTA,

Defendants.

-----X  
May 23, 2022  
10:11 a.m.

DEPOSITION via remote videoconference of  
ABDOU EL SHABEINY, the Plaintiff in the  
above-entitled action taken by the  
Defendants and held before Binita  
Shrestha, a Stenographic Court Reporter  
and Notary Public within and for the  
State of New York.

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2 A P P E A R A N C E S:

3

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17 BY: ADAM E. COLLYER, ESQ.

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19

20

21

22 Also Present:

23 Musa Hoxhaj, Plaintiff

24 Ricardo Cordero, Plaintiff

25

1 A. EL SHABEINY

2 us the managers.

3 Q. You and Musa had the same  
4 position regardless of what you called  
5 it, right?

6 A. What do you mean? Ricardo was  
7 us too. He was working with us as the  
8 same.

9 Q. That's another question. I'm  
10 asking specifically about Musa right now.

11 A. Yes.

12 Q. Musa and you both had the same  
13 position, correct?

14 A. Yeah. We're working in the  
15 front desk and dining room.

16 Q. And Ricardo Cordero, who is he?

17 A. He's the same. He working with  
18 us at front desk, and dining room, and  
19 private room.

20 Q. Do you remember whose idea it  
21 was to file this lawsuit?

22 A. I'm sorry. I couldn't hear you,  
23 Adam. Say it again.

24 Q. Do you remember whose idea it  
25 was to file this lawsuit?

1 A. EL SHABEINY

2                   A. No. After they opened back the  
3 restaurant again, and I called them. I  
4 said I'm ready to come back. They told  
5 me we don't need you.

6                   Q.    When did that conversation take  
7   place?

8                   A. Like when they opened. I don't  
9 remember exactly the date. But when they  
10 opened Sparks, I called, and I said I'm  
11 ready, and I think I sent a letter to  
12 Susan in her e-mail.

13 I said I'm antibody, COVID-19,  
14 because we had conversation, and I  
15 thought I have pneumonia because I don't  
16 know I have Corona. When I found I'm  
17 already antibody, I'm okay, I'm ready, I  
18 told her I got the letter from the  
19 hospital, I'm clean, I'm ready, and I'm  
20 ready to work.

21 Q. Do you remember what they said  
22 to you after you said I'm ready to come  
23 back to work?

24                   A. She told me, "No. We don't need  
25 you right now."

1 A. EL SHABEINY

2 Q. Do you remember why they didn't  
3 need you?

## 4 A. Why?

5 Q. Yes.

6                   A. I don't know. You can ask her  
7 why she answered me like this.

8                   Q. When you say her, you're  
9 referring to Susan Edelstein?

10                   A. Yeah. That's her answer. She  
11                   said -- I called Sal. I told him after  
12                   25 years, I got this answer. He said,  
13                   "I'm sorry. I have nothing to do with  
14                   this."

15 Q. And when you say Sal, you  
16 mean --

17 A. Shailesh.

18 Q. -- Shailesh Desai?

19 A. Shailesh Desai, the manager of  
20 the office.

21 Q. Mr. El Shabeiny, do you know who  
22 they brought back at that time?

23                   A. I don't remember the names, like  
24        six guys and one guy in the front. They  
25        put one guy in the front.

1 A. EL SHABEINY

2 to refer to Steven Cetta as Steve, okay?

3 A. Okay.

4 Q. How old is Steve?

5 A. 59.

6 Q. How long have you known Michael  
7 Cetta?

8 A. Since I worked there.

9 Q. When did you start work?

10 A. '95.

11 Q. At that time, were you hired as  
12 a server?

13 A. Correct.

14 Q. When were you moved from server  
15 to the front-of-the-house manager  
16 position?

17 A. I don't remember. It's like two  
18 years, a year and a half, something like  
19 that.

20 Q. When you say two years, you mean  
21 two years after you had gotten hired?

22 A. Yes, correct.

23 Q. So somewhere around 1997,  
24 around?

25 A. Correct. I was working

1 A. EL SHABEINY

2 A. No.

3 Q. What is your date of birth?

4 A. May 8th, '63.

5 Q. For the record, that makes you  
6 how old?

7 A. 59.

8 Q. The same age as Mr. Cetta?

9 A. That's why I remember his age.

10 When you asked me, that's why I say right  
11 away, 59.

12 Q. What's the highest level of  
13 education that you've achieved?

14 A. Bachelor's degree in accounting  
15 from Egypt.

16 Q. Were you born in Egypt?

17 A. Correct.

18 Q. When did you immigrate to the  
19 United States?

20 A. 19 -- I think -- 86.

21 Q. Do you hold any professional  
22 licenses or certifications?

23 A. No. From here, no.

24 Q. In Egypt?

25 A. Bachelor's degree.

1 A. EL SHABEINY

2 A. Say it again, Adam. I don't  
3 understand.

4 Q. You were employed until March of  
5 2020, correct?

6 A. Correct, correct.

7 Q. Do you remember the reason that  
8 you stopped working at Sparks?

9 A. I stopped working?

10 Q. Yes. Do you remember the  
11 reason?

12 A. I don't know. They don't want  
13 to take me back, and it's got involved  
14 with many things.

15 Q. In March of 2020, did the  
16 restaurant close?

17 A. Yeah, for the COVID.

18 Q. For COVID?

19 A. Yeah.

20 Q. That's the reason the restaurant  
21 closed, correct?

22 A. Correct.

23 Q. And that's the reason that you  
24 stopped working in March of 2020. It was  
25 because of COVID, right?

1 A. EL SHABEINY

2 A. Yeah.

3 Q. Do you remember hearing that you  
4 were furloughed?

5                   A. I don't understand by  
6 furloughed.

7 Q. Do you remember hearing that you  
8 were being laid off because of COVID?

9                   A. Everybody laid off in the  
10                    restaurant. Susan, she called us. She  
11                    said it's the last week. Shailesh with  
12                    the phone. And they said, "We're going  
13                    to close, guys. And we're going to hire  
14                    you back when we open by seniority."

15 That's the title exactly in the  
16 conversation.

17 Q. Mr. El Shabeiny, I'm showing you  
18 what's been marked as Defendant's Exhibit  
19 B. Can you see this on your screen?

20 Can you see this on your screen?

21 A T see it

22 Q. Take a minute to take a look at  
23 it

24 A Yes. Adam. I read it kind of

25 Q. Do you remember seeing this

1 A. EL SHABEINY

2 did Sparks pay for that food?

3 A. I don't hear what you said.

4 Q. Did you pay for that food, or

5 did Sparks pay for that food?

6 A. Did I pay for this food? No, I

7 don't pay for that food, but I open a

8 check for inventory.

9 Q. Were you ever involved in  
10 interviewing prospective servers?

11 A. No.

12 Q. Did you ever look at a resume or  
13 were asked to evaluate a candidate?

14 A. No.

15 Q. Did you ever write up any  
16 servers for performance or conduct  
17 issues?

18                   A. No. Maybe I did it once or  
19                   twice with Susan or Steve. They said  
20                   like put your signature. I put my  
21                   signature. But I don't write something  
22                   specific, you know.

23 Q. If a server had a problem with a  
24 customer, would they come to you, the  
25 managers?

1 A. EL SHABEINY

2                   A. Yeah, they come to see me, and  
3 they tell me.

4                   Q.  And what would you do in that  
5 situation?

6                   A. It depends on what the problem  
7 is. I call Steve downstairs or I go to  
8 the cook and show him the food. Should I  
9 reject it? Should I do this?

10 If they say the steak is not  
11 good, I have to show it to the cook  
12 because the cook he makes the decision  
13 for this, it's good or not good.

14 Q. Were you able to assign a waiter  
15 to a different section or table?

16 A. I'm sorry. Say it again.

17 Q. Were you ever able to assign a  
18 waiter to a different section or a  
19 different table?

20 A. It's rotated.

21 Q. What do you mean it's rotated?

22 A. It means the schedule is  
23 rotation, the waiters. If you work here  
24 tomorrow, you work there tomorrow. It's  
25 something being assigned for this.

1 A. EL SHABEINY

2 to work. Is that your testimony?

3                   A. Yes, correct, sir.

4 Q. Who would take that information  
5 and put it into the schedule?

6 A. Musa.

7 Q. Did you have any role in  
8 scheduling?

9           A. No. I just like replace the  
10        stations.

11 Q. Did you ever have any role in  
12 assigning side jobs?

13 A. Yes.

14 Q. How did you assign side jobs?

15 A. Whoever comes first, he take  
16 whatever said job first, he choose. Like  
17 you come first. You want to do napkin,  
18 do napkin. You want to come do ice, do  
19 ice. You want to set the station, do  
20 station.

21                    You have early-early,  
22    early-late, late-late in the schedule.

23 Late-late is not going to do side job.

24 Early-late is going to come 5 o'clock.

25 Dinner started already. He's not going

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1 A. EL SHABEINY

2 A. I don't know when, how, for how  
3 long. That's before '95. I don't know.

4                   Q.    Do you know how old Mr. Moran  
5    is?

6 A. Yeah. He's over 60.

7 Q. He's older than you are?

8           A. I believe so, a couple of years.

9           Q. Do you know if Mr. Moran has any  
10      particular religious beliefs?

11                   A. I don't know what he believes  
12                   in.

13 Q. Do you know if he's Muslim?

14 A. I don't know what he believes  
15 in. We never talk about religion. I  
16 don't know. Could be he's Muslim because  
17 he born as a Muslim, yeah, by the name.

18 Q. Do you know if he's a practicing  
19 Muslim?

20 A. I never saw him practice.

21 Q. Do you know if he ever prayed at  
22 work, for instance?

23 A. No, I never saw him.

24 Q. When you say no, you mean you  
25 don't know?

1 A. EL SHABEINY

2 A. No. It means no.

3 MR. O'NEILL: Objection.

4 THE WITNESS: It means no. I  
5 never saw him practice in Sparks.

6 BY MR. COLLYER:

7 Q. We've talked about Octavio Perez  
8 several times today, right?

9 MR. O'NEILL: Objection to  
10 form.

11 Q. We've referred to Octavio  
12 several times today, right?

13 A. I'm sorry, Adam. I don't  
14 understand what you're saying.

15 Q. Do you see Octavio Perez's name  
16 here --

17 A. Yes, I do.

18 Q. -- on Exhibit Q?

19 A. Yes, I do.

20 Q. Mr. Perez was also a manager,  
21 correct?

22 A. He has the same title as us.

23 Q. Same title as you?

24 A. Yeah. Call it manager, captain,  
25 maître d', host.

1 A. EL SHABEINY

2 Q. Do you know how old Mr. Perez  
3 was at the time that the restaurant  
4 closed?

5                   A. I don't know exactly how old he  
6                   is.

7                   Q. Do you know if he's older than  
8 you or younger than you?

9                   A. He's older than me. Do you  
10                 know, by the way, he passed away. He  
11                 died.

12 O. I do know that.

13                   A. Okay. That's why I don't want  
14 to talk too much about him. It's just  
15 like let him sleep in peace.

16 Q. I appreciate that, but there are  
17 some conversations we have had to have  
18 about him.

19 A. Okay, go ahead.

20 Q. You said Mr. Perez is older than  
21 you?

22                   A. I don't know exactly. Maybe  
23 he's the same age, one year less, two  
24 years up. Average, same age, around the  
25 age.

1 A. EL SHABEINY

2 Q. Right. And do you know the  
3 reason that this document was created?

4 A. I don't know.

5 Q. Do you know whether this  
6 document was created after the lawsuit  
7 that was filed against you and Sparks?

8                   A. Could be. They start to do a  
9 lot of things for this, yeah.

10 Q. Were you aware that Sparks had a  
11 24-hour hotline to report workplace  
12 complaints or discrimination?

13 A. No.

14 Q. Did you ever complain about age  
15 discrimination?

16 A. No.

17 Q. Did you ever call the 24-hour  
18 hotline to complain about it?

19 A. No.

20 Q. You also allege that you were  
21 discriminated against on the basis of  
22 your religion, right?

23 A. Yes.

24 Q. What religion do you practice?

25 A. I'm Muslim.

1 A. EL SHABEINY

2 I'm the one he ask tell them why you do  
3 -- you ask them to tell them.

10 And it's like this, you know,  
11 all the time, day by day, day by day.  
12 And I feel he enjoys to bother me with  
13 this every time he's upset about religion  
14 or about Muslims. He knows I'm Muslim  
15 like them. Why cursing the religion, my  
16 religion all the time?

17 Q. Did you ever pray at work?

18 A. Never.

19 Q. Did Steve or Mike take any  
20 action against you because of your  
21 religion?

22 MR. O'NEILL: Objection to  
23 form.

24 MR. COLLYER: You can respond.

25 A. No. Like what I see, he's

1 A. EL SHABEINY

2 cursing all the time about Muslim people  
3 or when they pray.

4 Q. Who were the waiters that Steve  
5 would criticize?

6                   A. I couldn't hear. Your voice is  
7 cutting off.

8 Q. Who were the waiters that Steve  
9 would criticize for taking time to pray?

10 A. Musa, he pray. Jamie, Rashid,  
11 and another one, I don't remember. Four,  
12 five guys, they are praying, four guys.  
13 Mustafa. I don't remember. I think  
14 another one, but I don't remember.

15 Q. Were you ever instructed to  
16 discipline any of these individuals  
17 because they prayed at work?

18                   A. No. I have nothing to do with  
19 this, you know.

20 Q. Was Steve aware that you're  
21 Muslim?

22 A. I'm sorry?

23 Q. Was Steve aware that you were  
24 Muslim?

25 A. Yeah.

1 A. EL SHABEINY

2 Q. You had been employed since the  
3 mid-90s at Sparks, right?

4 A. Correct.

5 Q. And according to the complaint,  
6 Steve was responsible for the day-to-day  
7 operations of the restaurant, right?

8 A. Mm-hmm, correct.

9 Q. And Mike made all executive  
10 decisions about the operations of the  
11 restaurant, right?

12 A. Yes, yes.

13 Q. They could have fired you at any  
14 time, right?

15 A. Absolutely, yes.

16 Q. Did they ever fire you because  
17 of your religion?

18 A. No.

19 Q. They promoted you, right?

20 A. I don't understand. They fired  
21 me before? That's what you said.

22 Q. Did they fire you for your  
23 religion?

24 A. I don't know what they fire me  
25 for. I told you for a lot of reasons.

1 A. EL SHABEINY

2 Q. What other acts of religious  
3 discrimination are you alleging?

4 A. I don't remember. That's it.

5 That's all I remember now. The food.

6 Q. What about the food?

7           A. The cook, he refused to -- like  
8        Ramadan, when we're fasting, he refused  
9        to heat for us the food. The food has  
10      been cooking since 2 o'clock afternoon in  
11      the night in the side area. It means the  
12      food start to smell or stink. Eight  
13      hours outside.

17 And Steve, he know this. He  
18 doesn't do nothing until his father he  
19 came, and we called him. He suspended  
20 the cook for two weeks or three weeks or  
21 something like that.

22 Q. What's the name of the cook?

23                   A. I forgot his last name. First  
24 name, Ernesto.

25 Q. Was Ernesto your supervisor?

1 A. EL SHABEINY

2 A. He's my supervisor?

3 Q. Yeah.

4 A. He's the cook. He's the one  
5 running the kitchen.

6 Q. Did he have any supervisory  
7 authority over you?

8 A. Steve or Mike.

9 Q. Could Ernesto have disciplined  
10 you or fired you?

11 A. No. He's the kitchen guy. He  
12 has nothing to do with the dining room.  
13 He's running the kitchen. He's the  
14 supervisor of the kitchen.

15 Q. When did this incident with the  
16 food happened?

17 A. When what?

18 Q. When did this incident with the  
19 food happened?

20 A. I don't remember.

21 Q. Five years ago?

22 A. Could be.

23 MR. O'NEILL: Objection to  
24 form.

25 A. Could be. I don't remember.

1 A. EL SHABEINY

2 Q. Four years ago?

3                   A. I don't remember, Adam.

4 Q. Do you remember if it was before  
5 or after the staff walkout in December of  
6 2014?

7           A. I don't remember, Adam. All I  
8       remember, the waiters, they wrote a  
9       petition. I think Sayed was one of them.  
10      He was a waiter during this time. He  
11      doesn't wear a tuxedo, and he's the one  
12      that complained, and the complaint when  
13      to Mike Cetta downstairs, and he was  
14      suspended right away.

15 Q. You're saying this was when  
16 Sayed was a waiter, a server?

17                   A.    Yeah.    And I complained, and  
18    Musa --

19 MR. O'NEILL: Wait for a  
20 question.

21 THE WITNESS: Okay.

22 BY MR. COLLYER:

23 Q. Other than the complaint about  
24 the food, did you ever complain about  
25 religious discrimination?

1 A. EL SHABEINY

2 A. To who?

3                   Q. Did you ever call the 24-hour  
4                   hotline?

5 A. No.

6 Q. Did you ever complain to Susan  
7 or Shailesh?

8 A. No.

9 Q. Did you ever file a claim with  
10 the City Commission on Human Rights or  
11 the State Division of Human Rights?

12 A. No.

13 Q. Did you ever file a complaint  
14 about the Equal Employment Opportunity  
15 Commission?

16 A. No.

17 Q. Are there any other actions that  
18 you believe were taken based on your  
19 religion than the ones we talked about?

20 A. I don't understand the question.

21 Q. Other than the conversations we  
22 have had about the food, about Steve's  
23 comments, are there any other actions  
24 that you believe were taken against you by  
25 Sparks because of your religion?